

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1327 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

(No. 1 to 5 NO)

HEIRS OF BIPINCHANDRA BACHUBHAI RAVAL

Versus

SAIYED MUSSAMIYA VALDAIMAM Haidarbax & 1

Appearance:

MR RN SHAH for Petitioners

MR MI PATEL for Respondent No. 1, 2

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 17/02/98

ORAL JUDGEMENT

The Petitioner is the original Plaintiff who had filed Civil Suit No. 3285 of 1981 (originally registered as Suit No. 74 of 1974), inter alia for the Specific Performance of an agreement dated May 21, 1962. The said suit was resisted by the Opponents/Defendants. The Court had framed the issues at Exhibit-32. Issue No.7 runs thus:-

" Whether plaintiffs are entitled to specific performance of the contract ? "

The trial Court had passed the orders below Exhibit-74 saying that, Issues No. 5, 6, 11 & 12 should be treated as the preliminary issues. Against the above said orders, the petitioner had preferred Civil Revision Application No. 1468 of 1979 before this Court. The above said Civil Revision Application came up for hearing before the Ld. Single Judge, who had passed the orders on 4th March 1981. Under these orders the Revision Application came to be allowed by setting aside the orders of the Court below. Ld. Single Judge was pleased to direct the trial Court to hear all the issues and to decide the suit, but it was made specific that, Issue No.7 reproduced as above was not to be considered and decided. This had happened because Ld. counsel who used to represent the petitioner before this Court, had made a specific concession before the Court that, the said issue which has been numbered as Issue No.7 and has been reproduced hereinabove is not to be considered and decided by the Civil Court.

It appears that, later on the petitioner wanted to press the above said issue and to have a finding on the same. The Court below has refused to do so by saying that, there are the orders of the Ld. Single Judge saying that all the other issues, excepting the Issue No.7 are to be decided. It is therefore that the petitioner is before this Court by taking out this Civil Revision Application.

Ld. counsel Mr. R.N. Shah who appears on behalf of the petitioner says that, at the relevant time the concerned Ld. counsel had agreed that all the issues, excepting above said Issue No.7 should be decided because at that time the legal position was entirely different and that, now, under the changed view of the Court a decree for specific performance could have been asked for. The question which requires consideration is as to when a Ld. counsel had agreed before this Court saying that, the petitioner does not press for the hearing and the decision of the above said issue, whether on a later juncture with a view to have the benefit under a changed legal position, he can ask for the hearing and the decision of the suit. The question requires to be answered in negative because it is clear that the Ld. counsel who used to represent the cause of the petitioner before this Court had in terms agreed that, the orders of the Court below should be set aside and that, the entire

suit should go for hearing but except the Issue no.7. It is therefore clear that the Ld. counsel had made a clear cut concession before this Court by saying that, the plaintiff/petitioners do not press for the hearing and the decision of the above said issue. When such a concession was made, it is abundantly clear that the plaintiff/petitioner was allowing his claim for the specific performance of the agreement to be lost. When once this is done and when, once acting upon the concession coming from the Ld. Counsel the Court has passed the necessary orders, the concession cannot be later on revoked or recalled, and that, what was actually being allowed to pass over from the sphere of judicial decision, cannot be once again ushered in .

In Smt. Jamilabai Abdul Kadar, Appellat v. Shankarlal Gulabchand and others, Respondents, A.I.R. 1975, S.C. pg. 2202 the Supreme Court has taken a view that, a Pleader has the authority to act by way of compromising a case in which he is engaged even without specific consent from his client, provided he is acting in good faith. The Supreme Court has also made it clear that, it would be prudent and proper to consult his client and take his consent if there is time and opportunity. It must be said immediately that, it is never the case of the petitioner that he was not consulted by the Ld. counsel before making the above said concession. It is thus clear that a concession made by the counsel would be binding on his client.

The Mysore High Court decision in Mallappa Fakirappa Sanna Nagashetty and others, Appellants v. Shivappa and another, Respondents, A.I.R. 1962, Mysore, pg. 140 makes the position more clear. While considering the provisions contained in Order-3, Rule-4, C.P.C. (1908) it has been said that, the general powers of a Pleader to conduct a case include the abandonment of an issue, which in his discretion, he thinks inadvisable to press.

Looking to the above said decisions, it appears that, when a clear cut concession was made by the Ld. counsel for the plaintiff/petitioner before this Court that Issue no.7 is not being pressed for, and ultimately the orders are being passed by this Court acting upon the concession made by Ld. counsel for the plaintiff/petitioner, it would not be open for the plaintiff/petitioner to urge before the Court below that, despite the orders of this Court, the Court below should go on hearing and deciding the above said issue. It might be true in some case that, later on there could have been a

change in the erstwhile existing legal position but that would not allow a party or a lawyer to retract the concession made before this Court on which a Court has passed the appropriate orders. In view of this, it appears that the present Revision Application requires to be dismissed. The same is hereby accordingly dismissed. Rule is discharged. Ad-interim relief shall stand vacated. No costs.

Ld. counsel Mr. R.N. Shah at this juncture urges that, before the Court below the plaintiff/petitioner had asked for the alternative prayer of damages. Needless it is to clarify that, even when the plaintiff/petitioner is not now being permitted to ask for a decree of specific performance, his alternative prayer for damages, nonetheless survives, for the consideration of the Court below.

/vgn.